

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 13, 2009

**CAROLYN HUDDLESTON, ET AL. v.  
JAMES CLYDE NORTON, III, ET AL.**

**Appeal from the Circuit Court for Jackson County  
No. 1710-P-33 Clara Byrd, Judge**

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**No. M2008-01638-COA-R3-CV - Filed December 8, 2009**

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This is a personal injury action brought by Carolyn Huddleston against two defendants who attempted to murder her, one of whom was her step-son. Both of the defendants currently are incarcerated for this crime. Prior to trial, defendant James Clyde Norton, III (“Defendant”), filed a motion seeking to participate in the trial by telephone. This motion was not ruled on by the Trial Court until the day of trial, at which time it was denied. The trial proceeded without the participation of Defendant, and a judgment was entered against him for \$1,885,775.62. Defendant appeals, claiming the Trial Court erred when it refused to allow him to participate in the trial by telephone. We agree. We vacate the judgment of the Trial Court and remand this case for a new trial with instructions to grant Defendant’s motion seeking to participate at trial by telephone.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the  
Circuit Court Vacated; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. McCLARTY, J., joined.

James Clyde Norton, III, pro se Appellant.

Henry D. Fincher, Cookeville, Tennessee, for the Appellees, Carolyn and Robert Huddleston.

## OPINION

### Background

In June of 2004, Defendant shot Carolyn Huddleston<sup>1</sup> at the request of her step-son, defendant Marvin Lee Huddleston, II. Both of the defendants eventually pled guilty to attempted first degree murder and each received a fifteen year prison sentence. They currently are incarcerated.

Fortunately, Plaintiff survived the attack. Plaintiff, however, was seriously injured and her medical bills have exceeded \$38,600.00. In June of 2005, Plaintiff filed this personal injury action against Norton and Huddleston.<sup>2</sup> This appeal involves only defendant James Clyde Norton, III.

This case was set for trial on July 15, 2008. On May 22, 2008, Defendant filed a “Motion to Allow Telephone Communication in Lieu of Court Appearance.” In this motion, Defendant reminded the Trial Court that he was incarcerated and further claimed that as “an inmate [he] has a due process right to participate in judicial proceedings of which he is a part, especially those of a punitive nature. The Defendant has a right to participate by telephone communication in lieu of court appearance and moves this honorable court to allow such.”<sup>3</sup>

Defendant’s motion to participate at trial by telephone was not resolved prior to the actual trial date. On the day of trial, the Trial Court denied Defendant’s motion and allowed the trial to proceed without any participation by Defendant. As to Defendant’s motion, the Trial Court’s final judgment states as follows:

1. The only defendants that remain in this action at this time are James Clyde Norton III (hereinafter referred to as “Defendant Norton”) and Marvin Lee Huddleston II (hereinafter referred to as “Defendant Huddleston”). The other defendants were either not served or were previously nonsuited and are not before the Court.

2. Defendant Norton has filed a Motion to Appear by Telephone, which is hereby DENIED. The Court finds that Defendant Norton had already plead guilty to the charge of attempted murder of Plaintiff Huddleston and therefore cannot offer any proof contradicting the issue of liability without being judicially estopped,

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<sup>1</sup> Carolyn Huddleston’s husband, Robert Huddleston, also is a plaintiff. For ease of reference only, we will refer to Carolyn Huddleston singularly as “Plaintiff.”

<sup>2</sup> Although other persons were named as defendants, they were dismissed as this case progressed. The only remaining defendants at trial were Norton and Huddleston.

<sup>3</sup> Plaintiff was seeking punitive damages in the amount of \$2,000,000.

and would have no information on the issue of damages, which is the main remaining issue. Defendant Norton's rights were adequately protected by the Court's probing cross examination of the Plaintiffs regarding their claimed damages. Furthermore, as a convicted felon, Defendant Norton would have little or no credibility with this Court. . . .

Following the trial, which essentially consisted of the testimony of Plaintiff and her husband, the Trial Court entered a final judgment against Defendant for \$1,885,775.62.<sup>4</sup>

Defendant appeals. At issue on appeal is the denial of Defendant's motion to participate at trial by telephone and Defendant's claim that the Trial Court was improperly biased against him.

### **Discussion**

The factual findings of the Trial Court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

*Reese v. Klocko*, No. M2005-02600-COA-R3-CV, 2007 WL 1452688 (Tenn. Ct. App. May 16, 2007), *no appl. perm. appeal filed*, involved a divorce case where the husband was in jail at the time of trial. While the case was pending, the husband had filed a motion requesting to participate in the trial by telephone. The trial court never ruled on that motion and proceeded to trial without husband being allowed to participate. *Id.* at \*1. On appeal we vacated the trial court's judgment, stating as follows:

Husband's second issue surrounds his claim that the Trial Court erred in not allowing him to participate in the trial by telephone. Wife's brief simply states that applicable law prevents removing an inmate from a penitentiary so that inmate can participate at trial in a civil case. *See* Tenn. Code Ann. § 41-21-304 (2006). Again, Wife misses the mark. Husband does not claim that he should have been transported from prison to attend the trial; rather, he simply requested that he be allowed to participate by telephone.

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<sup>4</sup> The judgment was entered jointly against both defendant Norton and defendant Huddleston. The judgment consisted of \$885,775.62 in compensatory damages broken down as follows: (1) \$38,610.62 for medical expenses; (2) \$67,200 for future medical expenses; (3) \$80,000 for lost wages; (4) \$320,00 for future lost wages; and (5) \$379,965 for past and future pain and suffering. The Trial Court also awarded \$1,000,000 in punitive damages.

In *Bell v. Todd*, 206 S.W.3d 86 (Tenn. Ct. App. 2005), we gave the following insight into the effects of a trial court's failure to rule on a prisoner's pending motions when that prisoner is a party to the litigation:

Litigation involving self-represented litigants can be challenging and difficult. *Irvin v. City of Clarksville*, 767 S.W.2d 649, 651 (Tenn. Ct. App. 1988). It can become even more difficult and cumbersome when the self-represented litigant is incarcerated. *Chastain v. Chastain*, No. M2003-02016-COA-R3-CV, 2004 WL 725277, at \*2 (Tenn. Ct. App. Mar. 22, 2004) (No Tenn. R. App. P. 11 application filed). However, an incarcerated litigant's right to meaningful access to the courts requires that the litigant be afforded a fair opportunity to present his or her side of the controversy. *Knight v. Knight*, 11 S.W.3d 898, 903 (Tenn. Ct. App. 1999)....

Appellate courts frequently have been confronted with cases in which the trial courts have disposed of claims either filed by or asserted against self-represented prisoners without first addressing the prisoner's pending motions. No matter whether the prisoner is the plaintiff or the defendant, reviewing courts have consistently held that trial courts err when they proceed to adjudicate the merits of the claim without first addressing the prisoner's pending motion or motions. These oversights have generally been found to be prejudicial rather than harmless because the failure to address pending motions "give[s] the impression that a litigant is being ignored," *Logan v. Winstead*, 23 S.W.3d at 303. We have also held that a prisoner's failure to comply with local rules requiring motions to be set for hearing does not provide a trial court with an excuse for failing to address the pending motions. *Chastain v. Chastain*, 2004 WL 725277, at \*2. Accordingly, when a trial court has failed to rule on an incarcerated litigant's pending motions, reviewing courts have consistently vacated the judgment and remanded the case to the

trial court with directions to consider and act on the pending motions.

*Bell*, 206 S.W.3d at 91 (footnote omitted).

*Knight v. Knight*, 11 S.W.3d 898 (Tenn. Ct. App. 1999) involved a divorce case wherein the husband, who was incarcerated, filed a motion seeking transportation to the trial or that the trial be continued until his release from prison, which was to occur in the not-so-distant future. *Id.* at 899. The trial court in *Knight* never ruled on the husband's motion and proceeded with the trial. *Id.* On appeal, this Court discussed the evolution of the law in Tennessee regarding participation by inmates in legal proceedings. We noted that there are various options available to a trial court "including, but not limited to, offering Husband the opportunity to testify by videotaped deposition, [or] allowing Husband to participate in the trial by telephone . . . ." *Id.* at 906. Because the trial court never ruled on the husband's motion and because none of the options available to the trial court were considered, we vacated the final divorce decree. *Id.* at 906-07.

Returning to the present case, we conclude that the Trial Court erred when it failed to rule on Husband's pending motions, including his motion to participate in the trial by telephone. Husband's motion to participate in the trial by telephone should have been considered by the Trial Court, *and it should have been granted*. We, therefore, vacate the final divorce decree in its entirety and remand this case for a new trial with directions that Husband be allowed to participate at trial by telephone.

*Reese*, 2007 WL 1452688, at \*4-5 (emphasis added).

We reach the same result in the present case. Defendant's "motion to participate in the trial by telephone should have been considered by the Trial Court, and it should have been granted." *Id.*, at \*5. Although the Trial Court did consider Defendant's motion, we hold the Trial Court erred in denying the motion for the reasons given by the Trial Court. While Defendant was estopped to deny liability, he had the right to cross-examine the Plaintiff about the extent of her injuries, lost wages, pain and suffering, etc. This is so regardless of whether the Trial Court conducts its own "probing cross examination of the Plaintiffs."<sup>5</sup>

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<sup>5</sup> This Court has not been provided a transcript from the hearing. However, for purposes of this appeal we assume the Trial Court's description of its cross-examination is accurate.

We do not hold here that a prisoner's request to participate by telephone at trial must always be granted. We hold only that under the facts presented to us in this appeal, Defendant's motion should have been granted as there were no grounds shown sufficient to deny his motion. Accordingly, the judgment of the Trial Court is vacated and this case is remanded to the Trial Court for a new trial with instructions that Defendant's motion to participate at trial by telephone be granted. *See Reese*, 2007 WL 1452688, at \*5.

Finally, we address Defendant's claim that the Trial Court was unfairly biased against him because he was a convicted felon. In pertinent part, Tenn. R. Evid. 609(a) provides as follows:

**Rule 609. Impeachment by Evidence of Conviction of Crime.** – (a) General Rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime may be admitted if the following procedures and conditions are satisfied:

(1) The witness must be asked about the conviction on cross-examination. If the witness denies having been convicted, the conviction may be established by public record. If the witness denies being the person named in the public record, identity may be established by other evidence.

(2) The crime must be punishable by death or imprisonment in excess of one year under the law under which the witness was convicted or, if not so punishable, the crime must have involved dishonesty or false statement. . . .

Because Defendant did not testify, there was no impeaching of his credibility and his felon past was not used against him. If Defendant does not testify on remand, his credibility will not be an issue. If, however, on remand Defendant does testify, then his conviction can be used against him to impeach his credibility in accordance with Rule 609. This would not result in an impermissible bias against Defendant as this is exactly what Rule 609 allows.

### **Conclusion**

The judgment of the Trial Court is vacated. This case is remanded to the Trial Court for a new trial and with instructions that Defendant's motion to participate at trial by telephone be granted. Costs on appeal are taxed to the Appellees, Carolyn and Robert Huddleston, for which execution may issue, if necessary.

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D. MICHAEL SWINEY, JUDGE